

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

WA.No. 2754 of 2007

AGAINST THE JUDGEMENT IN WPC.32420/2007 Dated 07/11/2007

APPELLANT/PETITIONER:

M/S.V.A.TECH WABAG LTD.,
AT THE SITE OF TRAVANCORE TITANIUM PRODUCTS,
KOCHUVELI,
THIRUVANANTHAPURAM,
HAVING ITS REGD. OFFICE AT NO.2 MURRAYS GATE ROAD,
ALWARPET, CHENNAI,
REPRESENTED BY ITS SENIOR COMMERCIAL MANAGER SRI.ARUN NAIR.

BY ADV. SRI.A.KUMAR

RESPONDENTS/RESPONDENTS:

1. THE DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES,
THIRUVANANTHAPURAM.
2. THE INTELLIGENCE OFFICER,
SQUAD NO.II,
DEPARTMENT OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.
3. THE CHIEF ENGINEER,
JBIC PROJECT,
KERALA WATER WORKS,
WATER WORKS CAMPUS,
VELLAYAMBALAM,
THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21/11/2007,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated, this the 21st day of November, 2007

JUDGMENT

H.L.Dattu, C.J.

The assessee, being aggrieved by the orders of assessment passed by the assessing authority for the assessment year 2006-2007, has filed appeal before the Deputy Commissioner (Appeals) Thiruvananthapuram. Along with the appeal, the assessee has also filed an application for grant of interim order, inter alia seeking to stay the orders of assessment passed by the assessing authority and the demand notice issued pursuant thereto.

(2). The first appellate authority has considered the application filed by the assessee for grant of interim order. After such consideration, by its order dated 24-10-2007 has granted the interim prayer staying the demand notice issued by the assessing authority, subject to the assessee depositing 50 percent of the disputed tax liability. Aggrieved by the said order, the appellant before the first appellate authority has preferred writ petition before this Court in W.P.(C) No.32420 of 2007. The learned Single Judge, after elaborately considering even on the prima facie case pleaded by the petitioner has come to the conclusion that the first appellate authority is justified in not granting unconditional interim order sought for by the assessee/appellant.

(3). Aggrieved by the order passed by the learned Single Judge dated 7th November, 2007, the petitioner in the writ Petition has presented this

writ appeal.

(4). Sri. Kumar, learned counsel appearing for the assessee/appellant would contend that, since there is no tax liability as such on the assessee, the first appellate authority should not have directed the assessee to deposit 50 percent of the disputed tax. In support of that contention, the learned counsel brings to our notice the observations made by the Apex Court in the case of ***Rapti Commission Agency Vs. State of U.P. {2006 (147) STC 566 SC}***. That was a case where a purchase had been made by the agent on behalf of the principal outside the State from sellers who were not dealers under the Act. A provision had been inserted in the Act imposing duty on the agent to deduct tax from the sellers and deposit the same with the Government. The said provision had been called in question before the Court. The Court, after detailed consideration of the issues involved was pleased to observe, that, since there is no liability as such on the agent the question of levying and compelling him to pay tax and thereafter asking him to seek refund of the tax is a futile exercise.

(5). The said decision, in our opinion, would not come to the aid of the assessee, in any manner, whatsoever. In fact, the learned Judge literally has gone into the merits of the petitioner's case before the first appellate authority and thereafter has come to the conclusion that it cannot be said that the petitioner is not liable for payment of tax due under the Act. It is only thereafter has confirmed the orders passed by the first appellate authority.

(6). In our opinion, it would be useful to recall the observations

made by the Apex Court in the case of ***Empire Industries Limited Vs. Union of India*** {1987 (64) STC 42}. In the said decision the Court has stated as under:

“(ii). In fiscal matters specially in cases involving indirect taxes where normally taxes have been realised from the consumers but have not been paid over to the exchequer or where taxes are to be realised from consumers by the dealers or others who are parties before the court, interim orders staying the payment of such taxes until final disposal of the matters should not be passed. It is a matter of balance of public convenience.”

“(iii). Governments are run on public funds and if large amounts all over the country are held up during the pendency of litigations, it becomes difficult for the Governments to run and becomes oppressive to the people. Governments’ expenditures cannot be made on bank guarantees or securities.”

(7). In view of the above, in our opinion, the first appellate authority as well as the learned Single Judge were justified in refusing to grant unconditional interim order sought for by the assessee/petitioner. Accordingly, the writ appeal requires to be rejected and it is rejected. We make it clear that any observation made by us and the learned Single Judge in the course of the order is only for the purpose of disposal of the Appeal and the Writ Petition and the same will not influence the appellate authority while disposing of the appeal

on merits.

(8). The appellant is granted a week's time to comply with the orders and directions issued by the first appellate authority.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

MS/DK